



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/561,500

07/24/2006

Roderick H. Scott

ABLE-0027

9312

26259 7590 01/27/2009
LICATA & TYRRELL P.C.
66 E. MAIN STREET
MARLTON, NJ 08053

EXAMINER

ARIANI, KADE

ART UNIT

PAPER NUMBER

1651

NOTIFICATION DATE

DELIVERY MODE

01/27/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

poreilly@licataandtyrrell.com

Malovrh et al. disclose a composition consisting essentially of a sponge toxin, sponge toxin comprises poly-APS (stock solution of poly-APS) (p.222 1st column 1st paragraph), sponge toxin is isolated from *Reniera sarai*, sponge toxin has a molecular weight between 5.0 kDa to 20 kDa (p. 221, Abstract and Introduction 1st column, p. 222 Fig.1a.). Malovrh et al. also disclose the concentration of sponge toxin is between 0.5 ng/ml and 0.5 µg/ml (p.223 Fig 2. see Figure legend lines 2-3). Malovrh et al. further disclose poly-APS induced hemolysis in a dose-dependent manner (p.223 1st column 2nd paragraph lines 1-2).

Although, Malovrh et al. do not disclose the composition for the reversible pore-formation, because the sponge toxin disclosed by prior art is “poly-APS”, the same as that of the claimed sponge toxin, therefore it inherently possess and must exhibit the reversible pore forming properties of the claimed composition. Therefore, Malovrh et al. clearly anticipate the claimed composition. As indicated in MPEP, “Products of identical chemical composition can not have mutually exclusive properties.” A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Applicant argues that the sponge toxin of the instant application is different from that taught by Malovrh et al. and none of the cited references teach or suggest the composition of claim 30. However, Applicant fails to show how.